APPEAL NO. 93313

On March 24, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing officer determined that the claimant, who is the appellant, had sustained an injury on (date of injury), in the course and scope of his employment as a plumber with (employer), that he gave timely notice of such injury, and that he had disability since October 15, 1992, as a result of such injury.

The carrier has appealed arguing that the great weight and preponderance of the evidence is against the decision of the hearing officer. The carrier notes that only the claimant gave testimony in support of his injury. The carrier further argues that any disability resulted from a previous accident that occurred in January, 1992. Claimant asks that the decision be upheld.

DECISION

After reviewing the record, we affirm the determination of the hearing officer, finding no reversible error.

The claimant stated that he was a plumber who had worked for over fifteen years for the employer. He said that on (date of injury), as he was coming down an aluminum ladder that was missing a step, he forgot about the missing step and fell about four feet off the ladder, landing on his left hip and buttock. Claimant stated that he immediately went looking for (Mr. S), his immediate supervisor, to report the accident, but that Mr. S was gone. Claimant said that he reported the incident to Mr. S on the following Monday, August 10th.

Claimant acknowledged that he had a similar accident on the ladder on January 24, 1992, but missed no more than a few days work from that occurrence. After the August accident, claimant said he worked until October 15, 1992, when he consulted with (Dr. D) and was taken off work. Claimant stated that the ladder was cut down after the August accident from the point where the broken step was. Claimant agreed that the first report of accident he filed with the Texas Workers' Compensation Commission (TWCC) was in November, 1992.

Claimant noted that Dr. D's report indicated that the date of injury was January 24, 1992. However, claimant says this date was given on a form he was given by the employer which allowed him to obtain medical treatment, and claimant said he told Dr. D about the August incident. He has not obtained further treatment from Dr. D because payment was denied. Claimant said he is unable to work because his foot goes to sleep.

(Mr. M), a manager for employer, stated that Mr. S would be the proper person to take a report of injury, and that according to company procedure Mr. S would then have informed him. He acknowledged that the ladder was fixed, but did not specifically recall whether it was after the January or August accident.

Mr. S stated that he knew about the August 7th accident because the company cut off the ladder to make it shorter. He recalled that claimant told him about the August accident on a day "when I came back from where I was" but did not recall the exact date. Mr. S said he did not fill out paperwork on the accident, and indicated that "maybe" claimant told him he had already reported the accident to the office. Mr. S recalled that claimant complained about his back ever since the first accident in January.

Dr. D's initial report diagnoses flexion injury cervical spine with resultant chronic sprain to neck, with a fracture spur at C4, low back pain and sciatica of unknown etiology, and hypertension. This report indicates that claimant should continue working "light duty." However, a slip dated the same day, October 15, 1992, states that claimant should remain off work until further notice. On that same date, Dr. D performed range of motion testing purporting to use the AMA Guides to the Evaluation of Permanent Impairment that assessed 7% whole body impairment; however, the TWCC medical report form indicates that whether claimant had reached maximum medical improvement was "undetermined." The date of injury on the report is January 24, 1992.

The hearing officer is the sole judge of the relevance and materiality, the weight and credibility, of the evidence offered in a contested case hearing. Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-6.34(e) (Vernon Supp. 1993) (1989 Act). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Texas Employers' Insurance Co. v. Page, 553 S.W.2d 98 (Tex. 1977). Corroboration of an injury is not required, and may be found based upon a claimant's testimony alone. Gee v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex. 1989). A carrier who asserts that incapacity results solely from a preexisting condition or accident has the burden of proving this. Page, *supra*, at p. 100. On the issue of notice, the hearing officer could have determined that Mr. S corroborated claimant's assertion that the injury was reported on August 10th, when Mr. S had returned from where he had been on the date of the accident. There is sufficient evidence to support the hearing officer's decision and it is affirmed.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Philip F. O'Neill
Appeals Judge